

effective May 26, 2018. As she was not reachable for a permanent appointment, the petitioner was returned to her prior held permanent title of Legal Secretary 2, effective May 26, 2018.

On appeal to the Civil Service Commission (Commission), the petitioner states that the classification of her position as Legal Secretary 2 is wrong, as she still works for three busy Deputy Attorneys General. She maintains that she successfully completed her working test period by serving provisionally. She states that she passed the exam, and is a hard worker, and she believes the “rule of three” was not correctly applied. She requests a promotion based on her work.

CONCLUSION

N.J.A.C. 4A:4-4.8(c), states, in pertinent part, that upon receipt of the certification, an appointing authority shall appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, and shall notify the Commission (of the disposition of the certification by the disposition due date. *N.J.A.C.* 4A:4-5.2(a) states, in pertinent part, that the working test period shall begin on the date of regular appointment. *N.J.A.C.* 4A:1-1.3 defines regular appointment (RA) as the employment of a person to fill a position in the competitive division of the career service upon examination and certification, or the employment of a person to a position in the noncompetitive division of the career service.

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority’s request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. It is well settled that upon reclassification of a position to a higher title, the incumbent is considered serving provisionally in the new title. Further, as part of the process of selection and appointment, a candidate must establish eligibility by demonstrating possession of the applicable experience and/or education requirements and pass an examination. *See In the Matter of Pinky Bemah* (MSB, decided December 1, 2004) (Satisfactory performance of duties on a provisional basis for several years did not warrant appellant’s appointment since she did not pass the examination for her positions). In other words, the only method by which an individual can achieve permanent appointment in the competitive division is if the individual applies for and passes an examination, is appointed from an eligible list, and satisfactorily completes a working test period. The steps necessary to perfect a regular appointment include, but are not limited to, this agency’s review and approval of a certification disposition proposed by an appointing authority and the employee’s completion of a mandatory working test period. *See In the Matter of Joseph S. Herzberg* (MSB, decided June 25, 2003) (Intent of appointing authority to permanently appoint appellant to Fire Captain not sufficient to permanently appoint petitioner since he was never appointed from

an eligible list). Therefore, as the petitioner has not received a regular appointment, she has not completed her working test period.

Additionally, the petitioner ranked seventh, and there were two interested eligibles above her on the list after the third and fourth appointments. Thus, the petitioner was not reachable for appointment on the subject certification. Accordingly, it was appropriate for the petitioner, who held the provisional position, to be displaced. It is noted that a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title.² In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. See *O'Malley v. Department of Energy*, 109 N.J. 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Similarly, no Civil Service law or rule affords an employee permanent status for good work performance.

One final note is warranted. The appellant has indicated that, although she has returned to her regular appointment, she “still” works for three busy Deputy Attorney Generals, as indicated in the classification review. The appointing authority is directed to assign the petitioner duties commensurate with her Legal Secretary 2 title if it has not already done so.

Accordingly, a thorough review of the record indicates that the petitioner has failed to demonstrate entitlement to relief.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

² The Commission does not have jurisdiction to review the termination of a provisional appointment. See *N.J.S.A.* 11A:2-6 and *N.J.A.C.* 4A:2-2.1.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1st DAY OF AUGUST, 2018



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